

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
FOR THE STATE OF TENNESSEE**

**TENNESSEE INSURANCE DIVISION, and** )  
**TENENSSEE DIVISION OF REGULATORY BOARDS,** )  
**BURIAL SERVICES SECTION,** )  
**Petitioners,** )

**vs.** )

**No.: 08-068**

**NATIONAL PREARRANGED SERVICES, INC., and** )  
**LINCOLN MEMORIAL LIFE INSURANCE** )  
**COMPANY,** )  
**Respondents.** )

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**CONSENT ORDER**

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The Tennessee Insurance Division, the Tennessee Burial Services Section, (collectively the “Divisions”) and Respondents, National Prearranged Services, Inc., and Lincoln Memorial Life Insurance Company (collectively the “Respondents”), hereby stipulate and agree, subject to the approval of the Commissioner of Commerce and Insurance (“Commissioner”) as follows:

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. The Commissioner has determined that the resolution set forth in this Consent Order is fair, reasonable, and in the best public interest.
3. This Consent Order is executed by Respondents for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this

Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

4. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

5. Respondents expressly waive all further procedural steps and all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

#### **FINDINGS OF FACT**

6. National Prearranged Services, Inc. ("NPS") is a Missouri corporation with offices located at 10 South Brentwood Blvd., Suite 304, St. Louis, MO 63105, and is not registered as a pre-need seller in Tennessee. NPS is required to be registered as a pre-need seller pursuant to TENN. CODE ANN. § 62-5-404 before offering or selling pre-need funeral contracts in Tennessee. NPS is subject to regulation under the Tennessee Prepaid Funeral Benefits Act, codified at Title 62, Chapter 5, Part 4 of the Tennessee Code Annotated.

7. Lincoln Memorial Life Insurance Company ("Lincoln") is a Texas Corporation with offices located at 1250 Capital of Texas Hwy. S., Building 1, Suite 470, P.O. Box 160050, Austin, TX 78716, and maintains a certificate of authority to sell insurance as an insurance company in the State of Tennessee. Lincoln is subject to regulation under the Tennessee Insurance Law, codified at Title 56 of the Tennessee Code Annotated.

8. On March 17, 2008, the Texas Department of Insurance directed Lincoln to cease writing all new business anywhere in the United States as it was in a hazardous financial condition.

9. On March 24, 2008, NPS signed a Consent Order agreeing to the summary suspension of its preneed seller license.

10. NPS has not had and does not currently have a pre-need funeral contract approved by the Commissioner for use in this state. NPS has sold and issued pre-need funeral contracts in this state since January 1, 2008.

11. On April 7, 2008, Lincoln provided the Division with a written statement that it will cease writing new business in Tennessee effective immediately.

#### **CONCLUSIONS OF LAW**

12. TENN. CODE ANN. § 56-1-416 provides that the Commissioner shall revoke or suspend all certificates of authority granted to an insurance company if the Commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition or has failed to comply with the law and, upon such a finding, no new business shall be done by the company or its agents under suspension or revocation while such default or disability continues and not until its authority to do business is restored by the Commissioner.

13. TENN. CODE ANN. § 62-5-413 provides that the Commissioner may deny an application for a registration, or may suspend, revoke, or refuse to issue or renew any registration granted to a pre-need seller if the Commissioner finds that a pre-need seller has violated any portion of Title 62, Chapter 5, Part 4 of the TENN. CODE ANN.

14. TENN. CODE ANN. § 62-5-406(a) provides that no pre-need funeral contract shall be offered in this state until a copy of the contract has been filed with and approved by the Commissioner.

15. It is the conclusion of the Commissioner that Lincoln is in a hazardous financial condition.

16. It is the conclusion of the Commissioner that NPS has violated TENN. CODE ANN. § 62-5-406(a).

17. Respondents neither admit nor deny the Findings of Fact above. However, for purposes of this Order, Respondents admit that if such facts are proven true, the Conclusions of Law, herein, are fair and reasonable. In order to avoid any further expenses or costs associated with litigating this matter, Respondents, hereby desire to enter into this Order.

### **ORDER**

**NOW THEREFORE**, on the basis of the foregoing, the waiver by the Respondents of their rights to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the admission by the Respondents of the jurisdiction of the Commissioner, the Commissioner finds that Respondents have agreed to the entry of this Order, this Order is appropriate, and in the public interest.

**IT IS ORDERED**, pursuant to TENN. CODE ANN. § 56-1-416 of the Tennessee Insurance Law, that:

1. Lincoln's Certificate of Authority is hereby suspended for a period of two (2) years. Should the Commissioner determine that Lincoln's financial condition is no longer unsound, she may at any time remove the suspension of the Lincoln's certificate of authority. The Commissioner, in her sole discretion, may also extend the suspension period should she find

such extension to be in the public interest. However, in the event the Lincoln's certificate of authority is not reinstated within two (2) years from the date of this Order, Lincoln's certificate of authority shall automatically be revoked without further action by the Commissioner or the Insurance Division.

2. While Lincoln's certificate of authority is either suspended or revoked, Lincoln shall cease writing new business in the State of Tennessee, and shall only renew those policies that the law may require. Lincoln shall, however, at all such times continue to file its annual statement, pay fees, licenses and taxes as required and applicable, and service existing policyholders and adjust losses thereunder.

**IT IS FURTHER ORDERED**, pursuant to TENN. CODE ANN. § 62-5-413 of the Tennessee Prepaid Funeral Benefits Act, that:

NPS' pre-need seller registration will not be issued by the Commissioner for a period of two (2) years from the date of this Order. The Commissioner, in her sole discretion, may also extend this period should she find such extension to be in the public interest. NPS shall, however, at all such times continue to pay fees and taxes as required and applicable and service existing policyholders and adjust losses thereunder.

This Consent Order is in the public interest and in the best interests of the parties. This Consent Order represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, NPS and Lincoln affirmatively state they have freely agreed to the entry of this Consent Order, that they have been advised that they may consult legal counsel in this matter and have had the opportunity to consult

with legal counsel, that they waive their right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Divisions, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

Nothing in this Consent Order should be construed to limit the authority of the Commissioner to take further action against Respondents should such action, in the opinion of the Divisions or the Commissioner, be necessary.

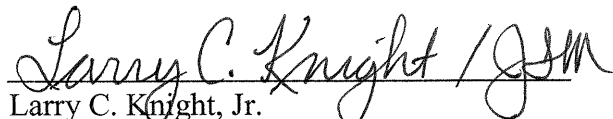
**IT IS SO ORDERED.**

**ENTERED** this the 15<sup>th</sup> day of April, 2008.

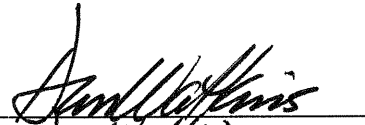
Leslie A. Newman  
Leslie A. Newman, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

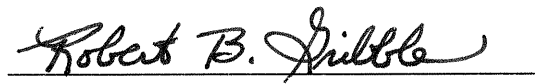
Lincoln Memorial Life Insurance Company

  
Larry C. Knight, Jr.  
Assistant Commissioner for Insurance  
Department of Commerce and Insurance  
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By:  
Title:

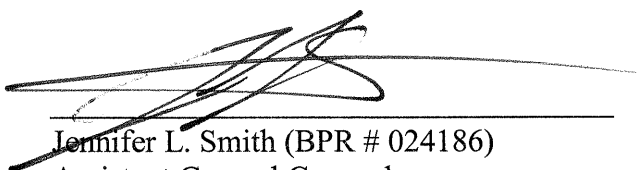
  
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